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IN THE COURT OF APPEALS OF INDIANA

GORDON B. DEMPSEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0510-CV-603
	)	
GEORGE C. CARTER and	)	
OLEVA GAY CARTER,	)	
	)	
Appellees-Plaintiffs.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Kenneth Johnson, Judge
Cause No. 49D02-0109-CP-1332

January 18, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Gordon Dempsey appeals various matters related to the foreclosure on property he was purchasing from George and Oleva Carter. We affirm in part and dismiss the remainder of Dempsey's appeal.

Issues

We restate the issues before us as:

I. whether Dempsey's appeal ought to be partially dismissed because of flagrant violations of the Indiana Appellate Rules;

II whether the trial court properly refused to set aside the foreclosure sale.

Facts

This is the third appeal to this court stemming from Dempsey's default on a land contract to purchase property owned by the Carters. In addition, litigation concerning this matter has occurred and continues in the federal courts.

In 1999, Dempsey entered into a land contract with the Carters to purchase a number of duplexes in Indianapolis, known collectively as Walnut Court, for a total (after a down payment and other credits) of $487,000. In 2001, after Dempsey had missed several payments under the contract, the Carters sought foreclosure or forfeiture of the property. On March 22, 2002, the trial court granted a motion for summary judgment filed by the Carters and entered a decree of foreclosure, while rejecting the Carters' request for forfeiture. The court also determined the amount of damages to which the Carters were entitled as a result of Dempsey's breach of the land contract.

After the trial court denied Dempsey's motion to correct error, he initiated an appeal to this court. Meanwhile, a foreclosure sale was set for October 2002. After the trial court denied Dempsey's request for a stay of the foreclosure sale pending appeal, and one day before the sale was to take place, Dempsey filed a bankruptcy petition under Chapter 13 of the Bankruptcy Code in the Bankruptcy Court for the Southern District of Indiana. The automatic stay provision of the Bankruptcy Code caused the cancellation of the foreclosure sale.

The appeal to this court continued after Dempsey filed his bankruptcy petition, and we issued an opinion on August 29, 2003. Dempsey v. Carter, 797 N.E.2d 268 (Ind. Ct. App. 2003) ("Dempsey I"). There, we held that the trial court had properly granted summary judgment to the Carters for Dempsey's breach of the land contract and ordered foreclosure. Id. at 273-74. We also held that the Carters clearly were entitled to collect attorney fees under the contract and that Dempsey was not. Id. at 274-75. However, the Carters conceded that the amount of the judgment entered by the trial court was inaccurate, and we remanded for further consideration of that issue. Id. at 274. Additionally, we rejected the Carters' cross-appeal claim that the trial court should have ordered forfeiture of Walnut Court, rather than foreclosure. Id. at 277. We denied Dempsey's petition for rehearing, and our supreme court denied his petition for transfer.

On remand, the trial court entered a recalculated judgment against Dempsey in the amount of $678,433.55 on June 30, 2004. This amount included an award of attorney fees totaling $81,716.80 that the bankruptcy court, in March 2004, had found the Carters incurred as of December 31, 2003 in relation to the foreclosure action, which total was

75% of the Carters' request. It also included $22,405 in attorney fees related solely to state court litigation.

Dempsey appealed the trial court's judgment on remand. During the course of the appeal, we issued an order requiring Dempsey to rebrief the case because he had attempted to raise issues already decided in Dempsey I. On December 29, 2005, we issued our opinion in this second appeal. Dempsey v. Carter, No. 49A02-0409-CV-784 (Ind. Ct. App. Dec. 29, 2005) ("Dempsey II"). We held that the judgment on remand was proper, including the amount of attorney fees awarded for both the bankruptcy and state court litigation.

While Dempsey II was under consideration by this court, proceedings in both the trial court and the bankruptcy court continued. The bankruptcy court granted the Carters relief from the automatic stay and ordered the abandonment of the Walnut Court property so that the foreclosure proceedings on it could continue. A foreclosure sale was scheduled for November 17, 2004. Dempsey appealed the bankruptcy court's abandonment decision to the United States District Court for the Southern District of Indiana, which originally reinstated the automatic stay on September 22, 2004. However, on November 12, 2004, the bankruptcy court dismissed Dempsey's Chapter 13 petition altogether because of unreasonable delay, after eight proposed reorganization plans had been rejected, and forbade Dempsey from filing another bankruptcy petition for at least one year.

Dempsey appealed the dismissal of his bankruptcy petition to the district court. That court, noting that once the bankruptcy proceeding was dismissed there could be no

automatic stay, reversed its earlier decision reinstating the stay. Additionally, on November 16, 2004, the district court issued an order denying Dempsey's request for a stay of the foreclosure sale while his bankruptcy appeal was pending. The court specifically found, in no uncertain terms, that Dempsey had little chance of success on appeal. **On December 8, 2006, the district court affirmed the bankruptcy court's dismissal of Dempsey's case and its determination of the Carters' attorney fees.**

On November 17, 2004, a sheriff's sale of Walnut Court was held. The Carters repurchased the property for $650,000. There were then a flurry of motions by both the Carters and Dempsey that are somewhat difficult to discern. However, on December 6 and 7, 2004, per the Carters' request, the trial court held two hearings regarding a deficiency judgment against Dempsey after deducting the $650,000 paid for Walnut Court. On December 20, 2004, the trial court entered three garnishment orders in which it found that there existed a deficiency of $163,631.08 above the $650,000 sale price. This obviously represents a greater amount than the total $678,433.55 in damages found in the trial court's June 30, 2004 order. The increased amount represented additional incurred interest and attorney fees not considered in the earlier order. The trial court later issued other orders to attach property belonging to Dempsey to satisfy the remaining deficiency judgment after the December 20, 2004 garnishments.

On November 24, 2004, meanwhile, Dempsey requested that the trial court set aside the foreclosure sale. At a hearing held on February 14, 2005, Dempsey evidently withdrew this request. However, on March 3, 2005, Dempsey filed another motion requesting that the foreclosure sale be set aside; the motion alleged that the $650,000 sale

price for Walnut Court was grossly inadequate and that the "oppressive conduct" of the Carters and their attorneys had improperly precipitated the foreclosure sale in the first place. App. p. 163. On May 9, 2005, the trial court held a hearing at which evidence was presented regarding the value of Walnut Court on November 17, 2004. On May 12, 2005, the trial court issued an order refusing to set aside the foreclosure sale, finding that the $650,000 sale price was fair and reasonable; it also found there still remained a deficiency of $152,977.66. After Dempsey's motion to correct error challenging this order was denied, he initiated the current appeal. He proceeds pro se but is a licensed attorney in this state.

Analysis

I. Motion to Strike and for Partial Dismissal

At the outset, we address the Carters' motion to partially dismiss Dempsey's appeal, and/or to strike portions of his brief and appendix.[1] We are not going to delineate each and every portion of Dempsey's appendix and briefs that we deem inappropriate and order them to be stricken. Instead, we hold that Dempsey's egregious violations of our appellate rules will result in dismissal of much of his appeal. Flagrant and egregious violations of the Indiana Rules of Appellate Procedure may warrant dismissal of an appeal. Kirchoff v. Selby, 703 N.E.2d 644, 656 (Ind. 1998).

This is Dempsey's third appeal to this court from the same underlying event. In his second appeal, we warned him not to include extra-record materials in the appendix

[1] This motion was filed before the case was fully briefed, but deferred by the motions panel to this writing panel for final decision.

and not to attempt to re-litigate issues already decided in the first appeal; to that extent, we ordered him to submit a new appendix and new brief. In this third appeal, Dempsey has again done what we warned him not to do in the second appeal, and done so egregiously. Rather than give him yet another bite at the apple, our sanction this time is more draconian yet within our discretion to order. We simply will not address the majority of issues Dempsey raises.

We begin by noting the res judicata issue with many of Dempsey's arguments in this appeal. In Dempsey's first appeal to this court, we held inter alia that the trial court, on March 22, 2002, had properly granted summary judgment to the Carters and ordered foreclosure, and that the Carters were entitled to attorney fees under the land contract but Dempsey was not. Dempsey I, 797 N.E.2d at 274-75. We denied Dempsey's petition for rehearing, and our supreme court denied his petition for transfer. Dempsey attempted to raise these issues decided in the first appeal in his second appeal, but we struck his brief and ordered him to file a new one that did not address these issues. In this, his third appeal, Dempsey yet again attempts to challenge the trial court's March 22, 2002 ruling.

In Dempsey's second appeal, we held inter alia that the amount of attorney fees awarded to the Carters under the land contract, calculated as of June 30, 2004 and including both state court and bankruptcy court litigation, was reasonable. Dempsey II, slip op. at 9-11. Dempsey again challenges the reasonableness of the amount of attorney fees awarded to the Carters under the land contract in this appeal.

Res judicata prevents the repetitious litigation of the same disputes. The principle of res judicata has two branches: claim preclusion and issue preclusion, also referred to

as collateral estoppel. Indianapolis Downs, LLC v. Herr, 834 N.E.2d 699, 703 (Ind. Ct. App. 2005), trans. denied. Claim preclusion applies where a final judgment on the merits has been rendered, and it acts as a complete bar to a subsequent action on the same matter or claim between the same parties and their privies. Id. If claim preclusion applies, all matters that were or might have been litigated are deemed conclusively decided by the judgment in the prior action. Id. The following four requirements must be satisfied for res judicata to preclude a claim: (1) the former judgment must have been rendered by a court of competent jurisdiction; (2) the former judgment must have been rendered on the merits; (3) the matter now in issue was, or could have been, determined in the prior action; and (4) the controversy adjudicated in the former action must have been between the parties to the present suit or their privies. Id.

Dempsey fails to present any cogent argument that res judicata should not apply to prevent re-litigation of the merits of the trial court's March 22, 2002 ruling. We see no reason why it would not apply. With respect to the reasonableness of the attorney fees awarded to the Carters, they generously note that Dempsey may be at least partially attempting to challenge attorney fees awarded after June 30, 2004, which obviously was not decided in the second appeal. However, Dempsey's opening brief makes no attempt to differentiate between attorney fees incurred before June 30, 2004, and those incurred after that date. We will not attempt to separate the wheat from the chaff for Dempsey.

We also note, with respect to Dempsey's claims of "oppressive conduct" by the Carters and the reasonableness of their attorney fees, that he frequently refers to the "tsunami" of fees and that he was "pulverized" by the Carters and their attorneys in the

Chapter 13 bankruptcy litigation, which supposedly caused the failure of that litigation to ease Dempsey's financial woes. See, e.g., Appellant's Br. pp. 23, 31. We ourselves cannot comment on the merits of Dempsey's Chapter 13 bankruptcy litigation. The bankruptcy court, however, obviously thought very little of it, having rejected eight proposed reorganization plans by Dempsey and finally dismissing the case altogether, as well as prohibiting Dempsey from filing another case for at least one year. An appeal of that dismissal is currently before the district court, but in denying Dempsey's motion to stay the foreclosure sale while that appeal was pending, the district court did not give Dempsey much of a chance of success. In fact, Judge Tinder stated:

> Dempsey has displayed a lack of realism as to the Chapter 13 process, and a similar lack of realism as to the now-requested Chapter 11 process. Such behavior places a considerable burden on the court system and has led to an overall lack of progression – with no end in sight. The public interest would not be served by yet another stay. In fact, Dempsey's redundant presentations – which misstate facts, fail to present relevant facts, and ignore rulings by the Bankruptcy Court and the Indiana courts – have become obstreperous, indicating a lack of good faith in his pursuit of yet another forestalling of the foreclosure sale.

In re Dempsey, No. 1:04-cv-1308-JDT-TAB, Entry on Appellant's Motion for Stay Pending Appeal, pp. 6-7 (S.D. Ind. Nov. 16, 2004).[2] **Ultimately, and very recently, the district court fully affirmed the decisions of the bankruptcy court. See id., Entry on**

[2] Judge Tinder also advised Dempsey that his self-representation likely was impeding the quality of litigation and suggested that he hire separate counsel. Dempsey has not heeded that advice.

Appeal from the United States Bankruptcy Court (S.D. Ind. Dec. 8, 2006).[3] Thus, Dempsey's portrayal of the negative course of the bankruptcy litigation (for him) as something the Carters and their attorneys concocted is without merit; at least, the bankruptcy court and the district court placed the blame on Dempsey for its failure.

Next, we address Dempsey's aspersions on the mental health of George Carter and his daughter, Georgia Hatcher, throughout his briefs and in other filings before this court. He claims, for example, that George has exhibited behavior patterns "consistent with depression, dementis [sic], alcoholism, or a combination." Response to Motion for Partial Dismissal, to Strike and for Extension of Time, p. 10. Regarding Georgia, Dempsey suggests, after his perusal of a medical website, that she may suffer from "post traumatic stress disorder, borderline personality disorder, and antisocial personality disorder," and that "its [sic] a good bet that at some point, Ms. Hatcher has been diagnosed, or encouraged to seek treatment. The disabilities or personality traits, clinical or not, of Mr. Carter and Georgia Hatcher have combined, to create a disastrous situation . . . ." Reply Br. p. 8. Dempsey presented no evidence to support such claims, nor has he demonstrated their legal relevance to this case. Baseless accusations of such an inflammatory nature are absolutely unacceptable in filings before this or any other court, especially by a licensed attorney.

Dempsey also disparages the law firm of Krieg DeVault in his briefs, which at one point he refers to as "Krack Devault," obviously an intentional misspelling. Appellant's

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[3] **Dempsey has filed a motion for reconsideration of the December 8, 2006 order.**

Br. p. 15. He goes even further in his reply brief, stating, "Did Krieg De Vault decide that with the [sic] both the democratic and republican state chairmen in their firm, they could run up whatever fees they wanted? 'We're Mudge, Rose, and we do what we want.' Associate, in Lions in the Street." Reply Br. pp. 8-9. Such language casts unsupported and improper aspersions not only on Krieg DeVault, but on every judge–state and federal, trial and appellate–that has approved that firm's fee awards, because it implies that political considerations may have influenced such approval. This sort of language will not be tolerated.

We also note that the exhibits in this case are in total disarray. We have before us one binder of exhibits, with four tables of contents.[4] The actual exhibits in the exhibit binder are not the exhibits presented at the May 9, 2005 hearing and, therefore, do not correspond with the transcript we have received; we are not sure at which hearing (of the many held in this case) these exhibits were presented. Two of the tables of contents appear to correspond to the documents in the binder, while two appear to correspond to the May 9 hearing exhibits. The May 9 hearing exhibits seem to be included in Dempsey's appendix, however.

The disarray of the exhibits would appear to be at least partly the fault of the court reporter. On the other hand, it appears that Dempsey included at least some original exhibits in his appendix, as demonstrated by the color photographs in it. Original

[4] When the court reporter tendered a volume of exhibits to the clerk of this court on August 17, 2006, the clerk sent the volume back to the court reporter because it was not in compliance with the rules. The exhibits were resubmitted on October 19, 2006, but we find the resubmitted volume to still be in violation of the appellate rules.

exhibits should be in a separately-bound exhibit volume, while the appendix should only have copies of exhibits that are especially pertinent to the appeal. See Ind. Appellate Rules 29, 50(A). Original exhibits should not be in an appendix, and how or why Dempsey came to put them there, we do not know. We are utterly confused as to the state of the exhibits and how they came to be the way they are, but in any case we urge both Dempsey and the court reporter to carefully read and follow the appellate rules in the future.

Respecting the exhibits, the Carters note that many of them that appear in Dempsey's appendix were not admitted into evidence, either because the Carters objected to them or Dempsey withdrew them. There might be a valid basis for including in an appendix proferred exhibits that the trial court did not admit because of an objection, if there is cogent argument in an appellant's brief as to why the trial court erred in refusing to admit such exhibits. Dempsey presents no such argument. As for withdrawn exhibits that the trial court never ruled on, we see no basis for including such documents in an appendix. Including non-record material in an appendix has the potential to mislead this court. Dempsey also improperly makes a misleading reference in his briefs to a mortgage broker who allegedly valued the property at issue near $850,000, but fails to note that this witness in fact did not testify at the May 9, 2005 hearing, and in fact no evidence regarding this witness was presented in any hearing.

As a final matter, we observe that Dempsey's briefs sometimes attempt to "incorporate by reference" arguments he has made previously before the trial court or this court in earlier proceedings. This is an improper attempt to circumvent Appellate Rule

46(A)(8), which requires a party's briefs, not external documents, to contain the arguments of the appellant. See Oxley v. Lenn, 819 N.E.2d 851, 855 n.2 (Ind. Ct. App. 2004). It also renders meaningless the word count or page count limitations for briefs found in Appellate Rule 44. We already granted Dempsey permission to file a brief that exceeded Rule 44(E)'s 14,000-word limit by 5,000 words. He cannot effectively exceed that generous 19,000-word limit by "incorporating" arguments made outside of the brief.

In sum, Dempsey has violated the following rules: Appellate Rule 46(A)(8), governing the argument sections of briefs and requiring cogent argument, which cogency is especially lacking with respect to issues already decided by this court; Appellate Rule 50(A), governing the contents of appendixes in civil cases; and Appellate Rule 42, which permits the striking of redundant, immaterial, impertinent, scandalous, or other inappropriate material from any document filed with this court. In addition, we remind Dempsey that as a licensed attorney he is bound by Indiana Professional Conduct Rule 3.1, which states in part, "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous . . . ." The comment to that rule states in part, "The advocate has a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed." Dempsey has come very close to and sometimes exceeded those limits in this appeal. We will address Dempsey's arguments regarding the validity of the trial court refusing to set aside the foreclosure sale. His appeal otherwise is dismissed as to the remaining issues he attempts to raise in his briefs.

II. Setting Aside Foreclosure Sale

We now analyze the merits of Dempsey's claim that the trial court should have set aside the foreclosure sale. First, he asserts the trial court failed to hold a hearing regarding matters that would have justified setting aside the sale. The May 9, 2005 hearing addressed whether the $650,000 sale price for the Walnut Court property was too low; however, Dempsey asserts he was not given the opportunity to prove that the foreclosure sale was brought about by improper "oppressive conduct" by the Carters and their attorneys. App. p. 162.

Dempsey relies on Indiana Trial Rule 60 as having required the trial court to hold a hearing on his "oppressive conduct" claim. He does not identify precisely which part of that rule would justify relief from the foreclosure sale, but we assume he means (B)(3), "fraud . . ., misrepresentation, or other misconduct of an adverse party." Subsection (D) of the rule states, "In passing upon a motion allowed by subdivision (B) of this rule the court shall hear any pertinent evidence . . . ." However, if there is no "pertinent evidence," a hearing is unnecessary. Benjamin v. Benjamin, 798 N.E.2d 881, 889 (Ind. Ct. App. 2003). Specifically, if it is apparent there are no allegations that, even if true, would warrant the relief sought, an evidentiary hearing would be a futile proceeding. Public Serv. Comm'n v. Schaller, 157 Ind. App. 125, 133-34, 299 N.E.2d 625 (1973). If the alleged equitable and legal grounds for relief from judgment existed at the time of the entry of the original judgment and continued unchanged to the present date and the moving party has always been aware of those grounds, it is not error for a trial court not to hold a hearing addressing the allegations. See id. at 134-35, 299 N.E.2d at 630-31.

Dempsey's claim that "oppressive conduct" by the Carters and their attorneys led to an improper foreclosure sale does not allege the existence of any new evidence Dempsey was unaware of at the time of any of the multiple previous proceedings in state and federal courts. In fact, it seems many of the grounds for "oppressive conduct" he is alleging concern matters that we have already determined are res judicata, such as the manner in which the original foreclosure order was obtained and the reasonableness of the Carters' attorney fees. This would appear to be simply another delaying tactic by Dempsey, challenging the foreclosure after the fact in a slightly different guise. Under the circumstances, the trial court did not err in denying Dempsey's motion for relief from judgment without hearing Dempsey's alleged evidence of "oppressive conduct" because such evidence would not have been "pertinent" to any permissible grounds for relief under Trial Rule 60(B). See id.

Next, we assess Dempsey's claim that the trial court improperly overruled his objections regarding the testimony of Anthony Lehn, a real estate appraiser and witness for the Carters at the May 9, 2005 hearing. He specifically argues that Lehn's testimony at the hearing was inconsistent with his earlier statements during a deposition and, therefore, should not have been allowed because the change constituted a discovery violation by the Carters. Dempsey relies primarily on Beauchamp v. State, 788 N.E.2d 881 (Ind. Ct. App. 2003). There, the defendant was charged with battery resulting in serious bodily injury to a minor. Eleven months before trial, the defendant deposed a doctor who at that time testified that he was unable to form an opinion regarding the minor's injuries. However, at trial, the State called this doctor as a rebuttal witness, who

then provided opinion testimony regarding the injuries that was unfavorable to the defendant; the defendant had not been made aware of the doctor's changed opinions before trial. We held that the State's conduct violated Indiana Trial Rule 26(E)(1), which requires a party to supplement discovery responses regarding changes in an expected witness' testimony in a timely fashion. Id. at 894. We reversed the defendant's conviction on this basis. Id.

Here, on May 5, 2005, Dempsey deposed Lehn. At that time, Lehn said he had not been hired by the Carters to form a firm opinion as to the value of Walnut Court, but instead "was asked to act as a consultant regarding valuation techniques for property of this sort . . . ." App. p. 493. He also said, "I don't have an opinion as to a small range of value like you would expect with an appraisal process." Id. at 500. Furthermore, he said that the $650,000 appraisal of the Carters' expert, Pam Brown, seemed to be on the "high side," while the $790,000 of Dempsey's expert, Bonnie Mitchell, was "a pretty steep number." Id. at 502. However, he also said that he not been able to review Mitchell's complete work file and could not definitively assess Mitchell's appraisal without doing so. At the conclusion of the deposition, Dempsey gave Mitchell's work file to the Carters' attorney.[5]

At the hearing on May 9, 2005, after Lehn had had an opportunity to review Mitchell's work file, he criticized her valuation techniques. He also indicated that what he saw as Mitchell's errors caused her to overvalue the Walnut Court property. He

[5] The Carters assert that this constituted a long delay by Dempsey in providing the file in contravention of the trial court's discovery orders.

explained what he believed to be the proper method for valuing the property and, at one point, gave three different possible values for the property, ranging between $476,145 to $523,760.

We cannot say Beauchamp requires another hearing in this case. As we noted in that opinion, a trial court enjoys broad discretion in ruling on alleged violations of discovery and we will reverse only for an abuse of that discretion. Beauchamp, 788 N.E.2d at 892. If there was a discovery violation in this case, it was a very minor one that cannot be compared to the complete reversal of opinion by the expert witness in Beauchamp. During the deposition, Lehn was questioned primarily regarding methods of property valuation. He also gave his opinion that Mitchell's $790,000 appraisal seemed too high. In these respects, Lehn's hearing testimony was consistent with his deposition. The primary difference between the deposition and hearing testimony was that Lehn had been able to review Mitchell's work file before the hearing and was able to give more detailed critiques as to why he thought her valuation was too high. The only possible conflict between the deposition and hearing testimony is that Lehn did not attempt to place any dollar value on the property at the deposition, but he did give some approximate valuations during the hearing. This was primarily because he had been able to review the raw figures used by Mitchell, but had applied his own methodology to conclude that her end appraisal was too high. The main focus of Lehn's hearing testimony effectively was to impeach Mitchell's valuation, not to give his own definite valuation, which was entirely consistent with his deposition. The trial court did not abuse its discretion in permitting Lehn to testify.

Finally, we address the primary substantive issue in this case, and that is whether the $650,000 the Carters paid for the Walnut Court property at the November 17, 2004 sheriff's sale was too low. A foreclosure action is equitable in nature, and a trial court has considerable discretion to set aside property sales that result from foreclosure judgments. Household Finance v. Ness, 810 N.E.2d 1146, 1148 (Ind. Ct. App. 2004). Trial courts may set aside a sheriff's sale if there is a gross inadequacy of price or circumstances showing fraud, irregularity, or great unfairness. Id. The trial court is entitled to significant deference in making such decisions and will not be reversed absent an abuse of discretion. Id.

Dempsey does not present any cogent argument that the foreclosure sale itself was riddled with fraud or irregularity.[6] Thus, we focus solely on the adequacy of the $650,000 sale price. A foreclosure sale may be set aside, or a request for a deficiency judgment denied, if it appears that the results of a sale are such that entry of a deficiency judgment would be shocking to the court's sense of conscience and justice. Arnold v. Melvin R. Hall, Inc., 496 N.E.2d 63, 65 (Ind. 1986). A mere allegation that the price paid for the land at the sale is inadequate is insufficient. Id. If the party foreclosed on believes that the value paid at the foreclosure sale is wholly inadequate, it is he or she who must bring the matter before the court. Id. The statutory protections of the mortgage foreclosure law, which also apply to land contracts, generally are adequate to

[6] As noted earlier, to the extent Dempsey claims "oppressive conduct" by the Carters, such arguments are mainly reiterations of arguments he has already made, and which have been rejected in other proceedings, regarding the validity of ordering foreclosure in the first place.

produce just outcomes. Id. at 66. The burden is on the defaulter to show gross inadequacy of price or inequity. Id.

Dempsey details at length in his brief why he believes the $790,000 appraisal of his expert, Mitchell, is "better" than the $650,000 appraisal of the Carters' expert, Brown, claiming among other things that his appraiser was more qualified, for example. All of these matters, however, were for the trial court to weigh and sift through in deciding whether to exercise its discretion to set aside the foreclosure sale at $650,000. Dempsey simply is asking us to reweigh the evidence in this case and substitute our judgment for that of the trial court. We will not do so.

We also remind Dempsey, "It must be borne in mind that a Sheriff's sale is a forced sale, and the test of inadequacy of price, is not what the property is worth, but what it will bring at a fair Sheriff's sale, which is a forced sale . . . ." Gilbert v. Lusk, 123 Ind. App. 167, 183, 106 N.E.2d 404, 413 (1952); see also Strong v. Jackson, 777 N.E.2d 1141, 1152 n.5 (Ind. Ct. App. 2002), trans. denied. Indeed, Mitchell indicated both in her testimony and in a written report that her $790,000 valuation assumed the existence of "a willing buyer and willing seller," or that "the price is not affected by undue stimulus." Tr. p. 22; App. p. 417. Mitchell's valuation, therefore, even assuming it was reliable in one sense (and the Carters presented evidence through Lehn that it was not), it was not a good indicator of a fair price to pay for Walnut Court at a sheriff's sale. The bottom line in this case is that there was evidence presented that $650,000 was a fair price to pay for Walnut Court. The trial court did not abuse its discretion in rejecting Dempsey's arguments to the contrary.

Conclusion

We affirm the trial court's refusal to set aside the November 17, 2004 foreclosure sale. Dempsey's appeal is dismissed as to the remaining issues he attempts to raise.

Affirmed in part and dismissed in part.

SULLIVAN, J., and ROBB, J., concur.